IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

CRL.A.No. 989 of 2002()

SC.231/2000 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
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APPELLANT: ACCUSED

SHAJU S/O. CHATHUNNI, PUKKODAN HOUSE,
MATTATHUR VILLAGE, NULUVALLY DESOM,
MUKUNDAPURAM TALUK

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.7924/2002 IN CRL.A.NO.989/2002

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

01/11/2007

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K.R.UDAYABHANU, J.

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Crl.A.No.989 of 2002-D

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Dated this the 1st day of November, 2007

J U D G M E N T

The appellant is the accused in S.C.No.231/2000 with respect to the offence under Section 55(a) of the Abkari Act and stands sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for three months.

2. It is the prosecution case that on 13/03/1998 at about 5 p.m at Mattathur village the accused was found in possession of five litres of illicit arrack in a jerry can.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 5, Exts.P1 to P6 and MO.1. PW.4 is the detecting officer and PW.1 the Excise Guard who accompanied PW.4. PWs.2 and 3 are independent seizure witnesses who turned hostile. PWs.1 and 4 have testified with respect to the incident in a uniform manner. PW.1 has deposed that on seeing the excise party the accused tried to escape and ran away but tripped and fell down and himself and the excise guards along with PW.4 arrested him and the contraband was seized

as per Ext.P1 seizure mahazar and sample was taken at the spot in a 375 ml bottle. Both the above witnesses have identified the accused. The case of the accused that he was at the relevant time unable to even walk as he had sustained fracture to both the legs is denied by PWs.1 and 4. No objective evidence has been adduced to establish the fact that the accused was not in a position to walk or run away and that he had sustained fractures. The Investigating Officer has testified with respect to the formalities of the investigation. Ext.P1 mahazar has been proved. Ext.P6 chemical analysis report does establish the fact that the sample contained 30.58% by volume of ethyl alcohol. PWs.1 and 4 has also identified MO.1 plastic container. The evidence of PWs.1 and 4 tallies with the recitals of Ext.P1 mahazar. In the circumstances, I find no reason to deviate from the findings of the court below that the accused is guilty of the offence alleged. The conviction is only to be confirmed; and I do so.

4. The counsel for the appellant has pleaded for leniency pointing out that more than nine years have elapsed since the commencement of the proceedings and that the accused was facing the prosecution so long. It is also submitted that the earnings of the accused is the sole means of livelihood of his family and that imprisonment may be

avoided. In the circumstances the sentence is modified to imprisonment till the rising of the court and to pay a fine of rupees one lakh and in default to undergo simple imprisonment for six months. The appellant is granted four months time to remit the fine amount. He shall appear before the III Addl.Sessions Judge, (Fast Track Court No.I), Thrissur, on 01/03/2008 to receive the sentence.

The criminal appeal is disposed of as above.

Sd/-
K.R.UDAYABHANU,
Judge

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